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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,867	08/29/2005	Rene Le Flecher	BLO-104/PCT/US	5241

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Lumen Intellectual Property Services  
2345 Yale Street  
2nd Floor  
Palo Alto, CA 94306

EXAMINER
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TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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09/11/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/522,867	<b>Applicant(s)</b> LE FLECHER, RENE	
	<b>Examiner</b> Lien T. Tran	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/28/05</u>   | 6) <input type="checkbox"/> Other: _____                          |

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Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is vague and indefinite because the body of the claim is not commensurate with the preamble. While the preamble recites a ready-to-eat cake or culinary preparation, there is no step in the body which will form a ready to eat product. There is no heating, or cooking or baking step to form a raw product into a ready-to-eat product. On line 2, the phrase “ extended shelf life” is indefinite because it is relative; what would be considered as “ extended shelf life”; 2 weeks, 2 months or what? Line 3, the phrase “ low water content” is indefinite because it is not known what the content can be to be considered as low.

In claim 19, the limitation of “ ready-to-eat “ cake has the same problem as claim 1.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 19 is rejected under 35 U.S.C. 102(b) as being anticipated by Narayanaswamy et al.

Narayanaswamy et al disclose a cake packaged in a container. The container comprises an aluminum or an ovenable plastic baking tray or tub to function as the

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baking container. The packaged product is shelf stable at ambient temperature. The batter inside the package can be prepared on a commercial scale for distribution.

Narayanaswamy et al disclose that the cake can be baked without transferring to a baking pan and that the cake can be prepared on a commercial scale for distribution. Thus, they disclose a ready-to-eat cake.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Narayanaswamy et al in view of Petrizzelli.

Narayanaswamy et al disclose a method of making a shelf stable ready-to-bake batter for baked goods including cake. The method comprises the steps of selecting ingredients including sugar, flour, water, fat and additives, forming a batter of the ingredients, injecting a gas into the batter to provide a density of about .7-1.1 g/cc, filling the batter into a container, filling the headspace portion of the container with inert as

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having an oxygen content of less than 4% and sealing the container. The container can comprise an aluminum or a plastic baking tub that functions as the baking container to eliminate the transfer of the batter. The batter has a water activity that is less than .85. Dried flour with considerable low moisture content can be used. Dry egg solids can also be used. The batter is formed under anaerobic conditions. ( see col. 3, col. 4 lines 20-48, col. 7 lines 39-63, col. 10 lines 45-50)

Narayanaswamy et al do not disclose applying a vacuum before closing the container and subjecting the base to a pasteurization treatment.

Petrizzelli discloses a process for making a shelf-stable dough. The dough is packed under high vacuum. ( see col. 4 lines 1-2.

Narayanaswamy et al teach flushing or charging the container with inert gas or gas blends to insure low oxygen atmosphere in any unfilled headspace in forming the shelf stable product. Petrizzelli teaches packaging under high vacuum in forming an ambient stable product. Both gas packaging and vacuum packaging to obtain shelf stability is known as shown by both reference; these concepts are also well known in the art. It would have been obvious to one skill in the art to use known alternative techniques to obtain the same objective. As to pasteurization, it would have been obvious to one skilled in the art to pasteurize the product when desiring to further enhance the shelf stability of the product. This is well known in the art. As to the “ready-to-eat” feature, the limitation is in the preamble which does not limit the claim. Furthermore, Narayanaswamy et al disclose that the cake can be baked without

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transferring to a baking pan and that the cake can be prepared on a commercial scale for distribution. Thus, they disclose a ready-to-eat cake.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

LeFlecher et al disclose ready-to-bake, shelf-stable cake product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 10, 2008

/Lien T Tran/

Primary Examiner, Art Unit 1794